

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789 (CGM)

SIPA Liquidation

(Substantively Consolidated)

In re:

BERNARD L. MADOFF,

Debtor.

IRVING H. PICARD, Trustee for the
Substantively Consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and the Chapter 7 Estate of Bernard L. Madoff,

Plaintiff,

v.

SQUARE ONE FUND LTD.,

Defendant.

Adv. Pro. No. 10-04330 (CGM)

MOTION FOR THE ISSUANCE OF LETTER OF REQUEST

1. Irving H. Picard (the “Trustee”), trustee for the liquidation of the business of Bernard L. Madoff Investment Securities LLC (“BLMIS”), under the Securities Investor Protection Act (“SIPA”), substantively consolidated with the chapter 7 estate of Bernard L. Madoff (“Madoff”), through the Trustee’s attorneys, Baker & Hostetler LLP, respectfully submits this Motion for the Issuance of a Letter of Request for International Judicial Assistance to the judicial authorities of Switzerland for the examination of Mr. Timothée Henry, a resident of Cartigny, Switzerland.

2. This application is made pursuant to 28 U.S.C. § 1781 and this Court's inherent authority, and in light of the comity between the United States and Switzerland. Service will be effected pursuant to the *Hague Convention of 18 March 1970 of the Taking of Evidence Abroad in Civil or Commercial Matters*, to which the United States and Switzerland are signatories.

3. Mr. Henry is a foreign citizen and a non-party. Thus, the Letter of Request provides the only means of compelling discovery from him.

FACTUAL BACKGROUND

Madoff's Ponzi Scheme and Square One's Connection to BLMIS

4. Madoff, through the investment advisory business of BLMIS, conducted a decades-long Ponzi scheme of breathtaking scale. (*See* Trustee's Amended Complaint filed on December 21, 2018, ¶ 39 (ECF No. 167).)

5. Square One Fund Ltd. ("Square One") is a British Virgin Islands investment fund that invested exclusively with BLMIS from approximately December 1998 until December 2008. (*Id.* ¶¶ 2–3, 63–64.)

6. In the two years preceding BLMIS's collapse, the Trustee alleges that Square One received \$6,410,000 in fraudulent transfers from BLMIS. (*Id.* ¶ 187.)

7. Further, the Trustee alleges that Square One received these transfers without "good faith" because it either knew or consciously avoided knowing that BLMIS's investment advisory business was a fraud. (*Id.* ¶¶ 7–16, 126–28, 149, 182.)

8. Luc Estenne created Square One and served as its director and manager. Mr. Estenne continues to serve in these capacities to this day. (*Id.* ¶¶ 4, 71–73.)

9. While running Square One, Mr. Estenne also ran an investment advisory firm, Partners Advisers S.A. ("Partners Advisers"), in Geneva, Switzerland. (*Id.* ¶ 5.)

10. Partners Advisers tracked and analyzed BLMIS's purported investment returns over a ten-year period, culminating in an analytical study (the "Estenne Study") conducted by Mr. Estenne and Square One in 1999. (*Id.* ¶ 100.)

11. The Estenne Study confirmed that BLMIS's returns were implausible and bore little to no correlation with BLMIS's purported investment strategy. (*Id.* ¶¶ 102–11, 116–19.)

12. In or around 2003, Partners Advisers personnel alerted Mr. Estenne to several red flags of fraud concerning BLMIS's operations. (*Id.* ¶¶ 149–57.)

13. As a result of this warning and other indicia of fraud, Mr. Estenne redeemed his personal investments in Square One and advised certain others close to him to do the same. (*Id.* ¶¶ 163–65.)

14. Nevertheless, Mr. Estenne continued to direct Square One to solicit investments from other investors, and received fees based on those investments. (*Id.* ¶ 167.)

15. The Trustee alleges that Mr. Estenne also took steps to ensure that neither Square One nor BLMIS would be subject to any due diligence reviews by Square One's investment manager or Partners Advisers. (*Id.* ¶ 169–71.)

Mr. Henry Has Relevant Knowledge

16. Mr. Henry has served as Chief Operating Officer of Partners Advisers since 2004.

17. Partners Advisers was a service provider for Square One, completing tasks on behalf of Square One including but not limited to providing back office functions, managing investments and redemptions, working with independent auditors for Square One, and managing Square One's administrator, custodian, and management company.

18. The Trustee's ongoing investigation has uncovered that Mr. Henry may have personal knowledge concerning the Trustee's allegations that Square One and Mr. Estenne had

knowledge of suspicious facts concerning BLMIS and Madoff, and/or knowledge that BLMIS's investment advisory business was a fraud.

19. Specifically, the Trustee's investigation has uncovered that in connection with his role at Partners Advisers, Mr. Henry performed back office and administrative tasks for Square One, including but not limited to working with Square One's administrator, approving Square One's monthly net asset value calculations and distributing them to Square One's shareholders, approving redemption requests received from Square One's shareholders, retaining and communicating with independent auditors for Square One and Square Asset Management (Square One's management company), communicating with other Square One service providers regarding Square One performance and fees, and communicating regarding BLMIS and Madoff.

20. The work that Mr. Henry performed gives him knowledge of Partners Advisers' role in Square One. Mr. Henry's testimony about his work relating to Square One will allow the Trustee to show that Partners Advisers acted as an agent for Square One.

21. The Trustee's investigation has also uncovered that in connection with his role at Partners Advisers, Mr. Henry communicated with Mr. Estenne, Mr. Jérôme Müller, and other Partners Advisers employees about Square One, BLMIS, and/or feeder funds into BLMIS. Mr. Henry also communicated with other Square One service providers, including but not limited to Bank of Bermuda, Circle Partners, Ernst & Young, and others concerning the management and administration of Square One.

22. The Trustee believes that Mr. Henry's knowledge stemming from his communications with Mr. Estenne, Mr. Müller, and other Partners Advisers personnel will enable the Trustee to prove that Mr. Estenne and Partners Advisers continued to direct Square One to solicit investments while receiving fees based on those investments, despite concerns over the legitimacy of BLMIS's investment advisory business.

23. The Trustee also seeks Mr. Henry's testimony in order to authenticate certain documents, as required by the Federal Rules of Evidence, 28 U.S.C. 101 *et seq.*

24. The Letter of Request is part of the Trustee's efforts to obtain testimony regarding Square One's knowledge of fraud at BLMIS. The testimony sought is directly relevant to the Trustee's allegations in the ongoing proceedings and is intended for use at trial to support the Trustee's claims to avoid and recover fraudulent transfers to Square One. This evidence is essential for the Trustee to fulfill his statutory mandate to maximize recovery of customer property for the ultimate benefit of all of Madoff's defrauded victims.

25. For the above reasons, the Trustee believes that the Proposed Letter of Request (**Exhibit A**) is just and appropriate and respectfully requests that the Court issue such Letter of Request to the indicated Judicial Authority.

Dated: July 12, 2022
New York, New York

Respectfully submitted,

/s/ Marco Molina

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